

Lynda J. Zadra-Symes (SBN 156,511)  
 Lynda.Zadra-Symes@kmob.com  
 Jeffrey L. Van Hoosear (SBN 147,751)  
 Jeffrey.VanHoosear@kmob.com  
 David G. Jankowski (SBN 205,634)  
 David.Jankowski@kmob.com  
 KNOBBE, MARTENS, OLSON & BEAR, LLP  
 2040 Main Street  
 Fourteenth Floor  
 Irvine, CA 92614  
 Phone: (949) 760-0404  
 Facsimile: (949) 760-9502

Attorneys for Defendant/Counter-Plaintiff,  
 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL  
 CERAMICS, INC. dba GLIDEWELL  
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

Civil Action No.  
 SACV11-01309-DOC(ANx)

**KEATING'S OBJECTIONS TO  
 EVIDENCE SUBMITTED BY  
 GLIDEWELL'S ATTORNEY  
 DEBORAH S. MALLGRAVE IN  
 SUPPORT OF ITS  
 OPPOSITION TO KEATING'S  
 MOTIONS FOR SUMMARY  
 JUDGMENT**

AND RELATED COUNTERCLAIMS.

Date: December 17, 2012  
 Time: 8:30 a.m.  
 Location: Courtroom 9D

Honorable David O. Carter

## **I. INTRODUCTION**

Defendant Keating Dental Arts, Inc. (“Keating”) hereby objects to the Declaration of Deborah S. Mallgrave, attorney for Glidewell from Snell & Wilmer, in Support of James R. Glidewell Dental Ceramics, Inc.’s Oppositions to Keating’s Motions for Summary Judgment (Dkt. No., 116 Ex. Y). The declaration objected to is inadmissible in full and part, and Keating requests that it not be considered as part of the record in deciding Keating’s motions for summary judgment.

All documentary evidence attached to Mallgrave’s Declaration was not timely served during discovery and should therefore be excluded under F.R.C.P. 37(c). After this Court denied Glidewell’s motion to amend the scheduling order, Glidewell has continued to produce information and witnesses in violation of F.R.C.P. 37(c). In its motions for summary judgment and oppositions to Keating’s motions for summary judgment, Glidewell has relied on several witnesses and documents (including those attached to Ms. Mallgrave’s Declaration) not produced prior to the close of discovery on October 29, 2012.

Glidewell’s actions are unacceptable and flagrantly disregard this Court’s order (DOC #074) by attempting to go behind the Court’s back to continue discovery and production. Under Rule 37(c) of the Federal Rules of Civil Procedure after an explicit proscription by this Court. F.R.C.P. 37(c), if a party **fails to provide information** or identify a witness as required by Rule 26(a) or (e), **the party is not allowed to use that information or witness** to supply evidence on a motion (emphasis added). All the documents referenced in Ms. Mallgrave’s declaration were generated on November 26, 2012, almost a month after the discovery cutoff deadline of October 29, 2012.

Therefore, Defendant respectfully requests that this Court exclude all of the Plaintiff's untimely information and witnesses because such evidence violates both the Court's orders and the Federal Rules of Civil Procedure.

## **II. OBJECTIONS**

### **A. Objections to Declaration of Mallgrave**

	<b>Testimony</b>	<b>Objection</b>
	¶ 2	Untimely Evidence. Exhibit 98, the web page located at <a href="http://www.toschlaboratoryinc.com/LunaZirconiaCrowns.html">http://www.toschlaboratoryinc.com/LunaZirconiaCrowns.html</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
	¶ 3	Untimely Evidence. Exhibit 99, the web page located at <a href="http://www.biocaddental.ca/services/solid-zirconia">http://www.biocaddental.ca/services/solid-zirconia</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
	¶ 4	Untimely Evidence. Exhibit 100, the web page located at <a href="http://www.origincadcam.com/products_ORIGIN-zirconia.html">http://www.origincadcam.com/products_ORIGIN-zirconia.html</a> was not produced by Glidewell during the

	Testimony	Objection
1 2 3 4 5 6		discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
7 8 9 10 11 12 13 14 15 16	¶ 5	Untimely Evidence. Exhibit 101, the web page located at <a href="http://solutions.3m.com/wps/portal/3M/en_US/3M-ESPE-NA/dental-professionals/products/category/digital-materials/lava-zirconia/">http://solutions.3m.com/wps/portal/3M/en_US/3M-ESPE-NA/dental-professionals/products/category/digital-materials/lava-zirconia/</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
17 18 19 20 21 22 23 24	¶ 6	Untimely Evidence. Exhibit 102, the web page located at <a href="http://dpsdental.com/Nautilus.html">http://dpsdental.com/Nautilus.html</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
25 26 27 28	¶ 7	Untimely Evidence. Exhibit 103, the web page located at <a href="http://www.5axisdental.com/full-zirconia-crowns/">http://www.5axisdental.com/full-zirconia-crowns/</a> was not

Testimony	Objection
	produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
¶ 8	Untimely Evidence. Exhibit 104, the web page located at <a href="http://www.bayshoredentalstudio.com/zirconia-crown.asp">http://www.bayshoredentalstudio.com/zirconia-crown.asp</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
¶ 9	Untimely Evidence. Exhibit 105, the web page located at <a href="http://www.adt-us.com/adt-fz--full-zirconia.html">http://www.adt-us.com/adt-fz--full-zirconia.html</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
¶ 10	Untimely Evidence. Exhibit 106, the web page located at <a href="http://www.adt-us.com/adt-fz--full-zirconia.html">http://www.adt-us.com/adt-fz--full-zirconia.html</a> [sic] (it is assumed that Glidewell meant <a href="http://wwwddslab.com/products/all-">http://wwwddslab.com/products/all-</a>

	Testimony	Objection
1 2 3 4 5 6 7		<a href="#">ceramics/z-crown-zirconia/</a> ) was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
8 9 10 11 12 13 14 15	¶ 11	Untimely Evidence. Exhibit 107, the web page located at <a href="http://www.nusmilecrowns.com/new_ZR.aspx">http://www.nusmilecrowns.com/new_ZR.aspx</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
16 17 18 19 20 21 22 23	¶ 12	Untimely Evidence. Exhibit 108, the web page located at <a href="http://crowndental.biz/home.html">http://crowndental.biz/home.html</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
24 25 26 27 28	¶ 13	Untimely Evidence. Exhibit 109, the web page located at <a href="http://cap-us.com/materials/details/28">http://cap-us.com/materials/details/28</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it

	Testimony	Objection
		should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).
	¶ 14	Untimely Evidence. Exhibit 110, the web page located at <a href="http://roedentallab.com/products_TLZ.asp">http://roedentallab.com/products_TLZ.asp</a> was not produced by Glidewell during the discovery period set by this Court. Therefore, it should be excluded under F.R.C.P. 37(c) (if a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion).

### III. CONCLUSION

Based upon the objections that Keating has made with respect to the above-identified portions of the Declaration of Deborah S. Mallgrave, Keating respectfully requests that the Court strike and not consider the identified declaration and portions thereof in deciding Keating's motions for summary judgment.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 3, 2012

By: /s/ Lynda J. Zadra-Symes

Lynda J. Zadra-Symes  
Jeffrey L. Van Hoosear  
David G. Jankowski

Attorneys for Defendant/Counter-Plaintiff,  
KEATING DENTAL ARTS, INC.